

distinguished, "scheduled foreign operations" could be used instead. Further, this commenter suggests that "since the term 'scheduled' now means any scheduled flight, there would be no need to define it, as the five round trips per week definition has been dropped."

FAA Response: The FAA disagrees with the comment that "scheduled" and "nonscheduled" should be substituted for the terms "domestic," "flag," "commuter," "supplemental," and "on-demand." These are five distinct kinds of operations that the FAA needs to identify and regulate separately according to the characteristics of each kind of operation and the terms are presently used throughout the regulations. Also, the "five round trips per week" concept has been reinstated for commuter operations with 9 or fewer passengers, as discussed in Section V.B., Applicability.

"Common carrier" is a term that has been discussed in numerous court cases. "Non common carriage" is being defined in § 119.3.

"All-cargo operations". Proposed § 119.3 defines "all-cargo operation" to mean any operation for compensation or hire that is other than a passenger-carrying operation. These operations follow the rules for on-demand or supplemental operations, regardless of whether the all-cargo operation is conducted on a regular, "scheduled" basis.

Comments: ALPA proposes that the FAA should discontinue the distinction between scheduled passenger and scheduled all-cargo operations and reserve that distinction for the nonscheduled all-cargo operation because there is little difference between the scheduled passenger and scheduled all-cargo operations.

FAA Response: The FAA has considered ALPA's suggestion; however, it is outside the scope of this rulemaking. However, the definition has been slightly modified so that passengers described in §§ 121.583(a) and 135.85 can be carried without the operation losing its all-cargo status.

"Commuter operations". The proposed definition for "commuter operations" limits the use of this term to scheduled operations in airplanes having 9 or less passenger seats or in any size rotorcraft.

Comments: Fairchild Aircraft states that applying the term "commuter operations" to operations with 9 or fewer passenger seats or to rotorcraft is inappropriate because this use of the term differs from the generally accepted meaning, i.e. frequent service over short stage lengths and service to small communities. According to the

commenter, under this proposed definition, commuter category airplanes will no longer be used in commuter operations. The commenter also states that the proposed definition is inconsistent with the use of the term "commuter operator" in part 93. The commenter suggests that a new term be invented for scheduled operations with 9 or fewer passenger seats or rotorcraft.

FAA Response: As was discussed in Notice 95-5 and earlier in this preamble, the term "commuter" is presently used in several different ways. The FAA agrees with the commenter that the proposed definition does not accommodate all of the different uses of the term "commuter." However, operators of aircraft with 9 or fewer passengers do provide frequent service over short stage lengths and service to small communities. Therefore, the term is appropriate for these operations. The FAA acknowledges that this definition differs from the definition of "commuter operator" in part 93 and from the DOT definition. That inconsistency will continue.

"Domestic operation". Proposed § 119.3 defines "domestic operation" to mean any scheduled operation in specified airplanes "between any points within the 48 contiguous States of the United States or the District of Columbia" (2)(i); "between any points entirely within any State, territory, or possession of the United States" (2)(ii); or "between any point within the 48 contiguous States of the United States or the District of Columbia and any specifically authorized point located outside the 48 contiguous States of the United States or the District of Columbia" (2)(iii).

The only comment received on this proposed definition is the comment on its inclusion of a tour operation that departs from and returns to same point which is discussed earlier. One change in the proposed definition is replacing the words "any required crewmember" with the words "each crewmember" to be consistent with the treatment of the single-engine Otter airplane as previously discussed. Additionally, the final rule has been slightly modified to include some of the language currently used in SFAR 38-2.

"Flag operation". Proposed § 119.3 defined "flag operation" to mean a scheduled operation conducted in specified airplanes "between any point within the State of Alaska or the State of Hawaii or any territory or possession of the United States and any point outside the State of Alaska or the State of Hawaii or any territory or possession of the United States, respectively" (2)(i); or "between any point within the 48

contiguous States of the United States or the District of Columbia and any point outside the 48 contiguous States or the District of Columbia (2)(ii).

Comments: AACA comments that currently Alaskan operations conducted under part 121 are conducted under the flag rules of part 121. According to the commenter, a number of Alaska operators currently hold operating authority and operations specifications to fly scheduled or charter service to Canada, and to the Commonwealth of Independent States (the Russian Federation). The commenter states that the rulemaking should clarify what operating rules are to be used for operations that previously operated solely under flag rules. According to the commenter, since most of the flights to the Russian Federation are on-demand, the impact of part 119 on these flights needs to be thoroughly analyzed.

FAA Response: Other than minor changes, the proposed definition of "flag operations" remains in the final rule as proposed. Accordingly, scheduled operations conducted under part 121 between a point in Alaska to a point outside of Alaska will be considered flag operations. Scheduled operations between a point in Alaska and another point in Alaska will be considered domestic operations. In fact, scheduled operations from one point in Alaska (or any other state) to the same point are considered domestic operations. Nonscheduled operations, whether between points within Alaska or between a point in Alaska and a point outside of Alaska, will be considered supplemental operations or on-demand.

One minor change in the definition adds operations between two foreign points to the list of locations included as flag operations.

"Maximum payload capacity". The proposed definition for "maximum payload capacity" is the same as the one currently used in SFAR 38-2, except for the allowances for determining the standard average weights for crewmembers.

Comments: GAMA comments that the standard oil allowance of 350 pounds found in the definition of "maximum payload capacity" should be changed to coincide with the type certificated oil value. The commenter points out that the 350 pound value greatly exceeds any value found among present and future 10-19 passenger commuter airplane designs. Fairchild suggests that the definition refer to "full oil" and that the specific 350 pound allowance should be deleted. RAA states that the definition uses obsolete values for minimum oil and fuel and recommends that the FAA eliminate the distinction in the